

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fair Isaac Corporation,) File No. 16-cv-1054(DTS)
a Delaware Corporation,)
)
Plaintiff,)
)
v.)
)
Federal Insurance Company,) Courtroom 14W
an Indiana corporation,) Minneapolis, Minnesota
and ACE American Insurance) Thursday February 16, 2023
Company, a Pennsylvania) 9:12 a.m.
Corporation,
)
Defendants.)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME II)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

* * *

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1 (IN OPEN COURT)
2 (Jury seated)
3 (9:12)
4 THE COURT: Good morning, everyone. Please be
5 seated.
6 Mr. Hinderaker, are you ready?
7 MR. HINDERAKER: I am, Your Honor.
8 THE COURT: All right. You may proceed. Thank
9 you.
10 A JUROR: Your Honor, our screen doesn't work.
11 THE COURT: It's on now?
12 A JUROR: Yes.
13 THE COURT: Everyone else, your screens are all
14 up? Okay. Good.
15 MR. HINDERAKER: Good morning, everyone.
16 Yesterday Judge Schultz mentioned about the rule
17 of law, and for me, that's the very best reason that there
18 is for me to be a lawyer. I know that all of us have
19 something else to do than be here, but I do hope that
20 regardless of the outcome, regardless of -- for my client or
21 against my client, regardless of the outcome, that after our
22 weeks of work together, you think that this effort and this
23 experience has been worthwhile as well because we all are at
24 the moment participating together in the rule of law of this
25 country.

1 of all these other insurance companies, and ACE American
 2 became the one using Blaze Advisor to sell insurance. No
 3 license, no permission. As a consequence, that use is
 4 copyright infringement. FICO did not learn of ACE
 5 American's use of Blaze Advisor until this lawsuit. So in
 6 the chronology, we have the unlicensed use by Chubb & Son,
 7 Federal being responsible, and the unlicensed use by ACE
 8 American.

9 So now let me turn to the remedy or the damages
 10 that FICO seeks in this lawsuit. The employees of the three
 11 different insurance companies were able to use Blaze Advisor
 12 because Chubb & Son violated that provision of 3.1 regarding
 13 not permitting anybody but a Chubb & Son employee to use it.
 14 So there's a period of time before the license agreement is
 15 terminated that FICO seeks to be compensated for all the
 16 applications that these foreign insurance companies used to
 17 sell insurance with Blaze Advisor. And then the license
 18 agreement is terminated, but just like Chubb & Son, the
 19 foreign insurance companies don't stop. And so FICO seeks
 20 to be compensated for their use until their use actually
 21 does stop.

22 There is the period of time when Chubb & Son is
 23 using Blaze Advisor after termination, and FICO seeks to be
 24 compensated for that. And then there is the period of time
 25 where ACE American, unlicensed, infringer of copyrights,

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1 uses Blaze Advisor on applications, and FICO wants to be
 2 compensated for that.

3 So FICO looks at the damages in this way: The
 4 unlicensed use of the foreign insurance companies before
 5 termination, foreign insurance company use after
 6 termination, unlicensed Federal use after termination, and
 7 then ACE American's copyright infringement. So how do we
 8 determine the dollar value to compensate FICO? That, ladies
 9 and gentlemen, is your job.

10 Our last witness will be Bill Waid, a person who
 11 has negotiated many hundreds of Blaze Advisor license
 12 agreements over the years. And as I mentioned, there is no
 13 one standard fee. And he'll explain first, you know, FICO's
 14 value-based pricing. He'll look to some pricing methodology
 15 that FICO has used since 2003. He'll testify how the
 16 marketplace has accepted that pricing methodology for the
 17 last 20 years. He'll relay his experience in negotiating
 18 license agreements under the unique facts of each
 19 circumstance. Every license, every licensee, every
 20 circumstance has its own uniqueness to it.

21 There is one set of circumstances when you're
 22 trying to negotiate a license agreement with a brand new
 23 client, and there's another set of circumstances when you're
 24 trying to figure the fair value to be compensated when the
 25 license agreement has been terminated but the former client

1 needs a transition license to move away from using Blaze
 2 Advisor.

3 Those circumstances are quite different. The
 4 motivations between those circumstances are quite different.
 5 And Mr. Waid will explain that Chubb & Son looks to the
 6 total lifetime value of the relationship when it's
 7 negotiating the fee. And so he will discuss total lifetime
 8 value in the context of a brand new client, total lifetime
 9 value in the context of the circumstance where a former
 10 client needs a transition license.

11 The evidence will also consider and present for
 12 your consideration well, how is Blaze Advisor used? How
 13 does the licensee use Blaze Advisor? Well, in this case, it
 14 was used -- it was central to the licensee's business
 15 because it was used to sell insurance, and their business is
 16 selling insurance.

17 Another consideration, and you figure out the fair
 18 fee, is how much insurance was sold using Blaze Advisor? As
 19 I mentioned, it's about \$5 billion for each unlicensed year.

20 Of course, licensees have their counterpoints to
 21 be made in a negotiation. Mr. Waid will explain his
 22 experience with respect to that as well.

23 And then at the end you will be the ones to
 24 decide, what's the compensation to FICO for the years of
 25 unlicensed use in these many applications to sell insurance?

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1 And, now, let me now turn to what the law calls
 2 disgorgement. This is the issue that the Court will be
 3 seeking your advice on.

4 Disgorgement is a legal word that means taking
 5 away from the infringer the benefits that are gained by the
 6 infringement. And FICO seeks an award of disgorgement
 7 because the infringement of intellectual property has
 8 consequences. So says the copyright law of the United
 9 States.

10 Here, over the years of infringement, Blaze
 11 Advisor was used in connection with selling \$21 billion
 12 worth of insurance. That's a huge number. Putting that
 13 number in context, during that same period of time, Chubb
 14 Limited sold more than \$150 billion worth of insurance. The
 15 amount of benefit to be taking away from the defendants is
 16 about 14 percent of that total.

17 Again, returning to the Chubb Limited 2018 annual
 18 report, technology is a competitive weapon. In this case,
 19 the defendants took the know-how, their own know-how of how
 20 to sell insurance, but then they made it operational by
 21 automating the process of selling and by automating the
 22 decisions necessary to sell insurance. As stated in the
 23 RFI, they needed Blaze Advisor in order to expand into the
 24 small and mid-markets.

25 We will have an industry expert by the name of

1 A. I guess. Yes.

2 MS. KLIEBENSTEIN: No further questions. Thank
3 you.

4 THE COURT: Thank you, Ms. Kliebenstein.

5 Which counsel for Federal? Mr. Fleming, what is
6 your best estimate of how long you'll go on cross?

7 MR. FLEMING: Like 25 to 35 minutes. If I did it
8 tomorrow, I'll shorten it by ten.

9 THE COURT: Make sure that microphone is on. I
10 didn't hear the last part of that. Twenty-five to 35
11 minute, you said?

12 MR. FLEMING: Yes.

13 THE COURT: I think we'll break then for the
14 evening. We're five minutes before 5:00. Sometimes if
15 we're close to finishing a witness, we'll finish them and go
16 a little past 5:00, but 25 to 35 minutes and then they get
17 redirect, I'm not going to keep you here until 6:00, okay?

18 So we're in recess for the evening.

19 (Jury leaves courtroom.)

20 (JURY NOT PRESENT)

21 THE COURT: I have a couple of housekeeping
22 matters, just so you know. I'm controlling the monitors up
23 here, and I am switching on and off the jury monitors, not
24 knowing if we're going to have an exhibit that's going to be
25 objected to.

1 What I think may be the easiest way to deal with
2 this is if you're the presenting lawyer and you know there's
3 an exhibit -- there's an objection to the exhibit, just nod
4 at me or something, so I'll keep the jury monitor off until
5 we've resolved the admissibility. If we know it's coming
6 in, I'll leave it on.

7 MS. KLIEBENSTEIN: Did the jury see the exhibits I
8 just showed?

9 THE COURT: Yes, they did.

10 MS. KLIEBENSTEIN: Okay. Thank you.

11 THE COURT: And you didn't see, but I looked over
12 to Federal's table to make sure there was not an objection
13 coming, okay?

14 So do we have the exhibit list with the -- do we
15 know what is clearly objected to and what's not?

16 THE CLERK: Yes.

17 THE COURT: So we'll be looking at that too. But
18 just be aware that unless I know that it's been admitted,
19 I'm not turning that on until I get some kind of
20 confirmation, okay?

21 MS. KLIEBENSTEIN: Sure. And I have one further
22 question, and I asked this a little bit with the joint
23 exhibits. Even though we're not moving --

24 THE COURT: Those are admitted. I'm sorry.

25 MS. KLIEBENSTEIN: Perfect.

1 THE COURT: Have I confused everyone, or does
2 everyone follow what I'm saying?

3 MS. KLIEBENSTEIN: Yes, but I have another issue
4 too.

5 THE COURT: Come on up to the podium, if you
6 would.

7 Mr. Marce, you can step down if you'd like.

8 MS. KLIEBENSTEIN: He's interested in what we're
9 doing.

10 THE COURT: You can stay there too.

11 MS. KLIEBENSTEIN: The source code, highly
12 confidential - top secret, is on here (indicating). We did
13 not move this in the courtroom because only minor excerpts
14 were shown and the trade secrets weren't revealed. However,
15 it's going to stay on here.

16 How would Your Honor like to handle this from now
17 until the jury deliberates?

18 THE COURT: Do you plan to use it again?

19 MS. KLIEBENSTEIN: Nobody wants to see this again.

20 THE COURT: I didn't say that.

21 MS. KLIEBENSTEIN: Maybe Terry does.

22 THE COURT: If nobody plans to use it again, we
23 will take custody of it.

24 Is the computer itself marked, by any chance?

25 MS. KLIEBENSTEIN: No, but we can give it an

1 exhibit number and mark the computer itself.

2 THE COURT: Let's give it an exhibit number and
3 mark the computer.

4 Now, we can take custody of it, I just said, but
5 you can also retain custody if that's better for your
6 clients, if you're more concerned that way.

7 Do you have any objection to that? Okay. Why
8 don't we do it that way. Just make sure to have it here for
9 when they deliberate.

10 Anything else, Ms. Kliebenstein?

11 MS. KLIEBENSTEIN: No, Your Honor.

12 THE COURT: Okay. Anything for Federal?

13 MR. FLEMING: No, Your Honor.

14 MS. GODESKY: No, Your Honor.

15 THE COURT: Thank you, everyone. We are in
16 recess.

17 (Court adjourned at 4:59 p.m.)

18 * * *

19 I, Paula K. Richter and Maria Weinbeck, certify
20 that the foregoing is a correct transcript from the record
21 of proceedings in the above-entitled matter.

22

23 Certified by: s/ Paula K. Richter

24 Paula K. Richter, RMR-CRR-CRC
Maria Weinbeck, RMR-FCRR